

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: JUUL LABS, INC.,
MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY
LITIGATION,

Case No. 19-md-02913-WHO

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
PROPOSED AGENDA**

This Document Relates to:

ALL ACTIONS

Pursuant to Civil Local Rule 16-10(d), counsel for Defendants Juul Labs, Inc. (“JLI”), Altria,¹ Director Defendants,² E-Liquid Defendants,³ Retailer Defendants,⁴ and Distributor Defendants⁵ (collectively “Defendants”), and Plaintiffs’ Co-Lead Counsel (“Plaintiffs”) (collectively referred to herein as the “Parties”) respectfully provide this Joint Case Management Statement in advance of the Further Case Management Conference scheduled for January 20,

¹ “Altria” refers to Altria Group, Inc., and the Altria-affiliated entities named in Plaintiffs’ Consolidated Class Action Complaint and Consolidated Master Complaint (collectively, “Complaints”), see ECF Nos. 387, 388.

² “Director Defendants” refers to Messrs. James Monsees, Adam Bowen, Nicholas Pritzker, Hoyoung Huh, and Riaz Valani.

³ “E-Liquid Defendants” refers to Mother Murphy’s Labs, Inc., Alternative Ingredients, Inc., Tobacco Technology, Inc., and Eliquitech, Inc.

⁴ “Retailer Defendants” refers to Chevron Corporation, Circle K Stores, Inc., Speedway LLC, 7-Eleven, Inc., Walmart, and Walgreen Co.

⁵ “Distributor Defendants” refers to McLane Company, Inc., Eby-Brown Company, LLC, and Core-Mark Holding Company, Inc.

2023.

I. PARTICIPANT INFORMATION

The January 20, 2023 CMC will proceed by Zoom. Anyone who wishes to attend the conference virtually may log in using the information available at:

<https://www.cand.uscourts.gov/judges/orrick-william-h-who/>.

II. ISSUES TO BE DISCUSSED AND PROPOSED AGENDA

1. Status of Case Filings and Dismissals

2. Case Management Matters

3. ADR Status

III. STATUS OF CASE FILINGS AND DISMISSALS

As of January 18, 2023, approximately 5,702⁶ cases are pending in this MDL, naming 120 defendants. A list of these defendants is attached as **Exhibit A**. To date, 4,270 personal injury cases and 1,435 government entity cases (including 1,349 school districts, 43 counties, 8 cities, and 36 tribes) have been filed in this MDL. 822 MDL plaintiffs have voluntarily dismissed their cases (813 personal injury plaintiffs, 27 class plaintiffs, and 2 school districts); 76 cases have been dismissed without prejudice pursuant to CMO No. 8; and 19 other cases are subject to pending motions to dismiss without prejudice that have not yet been ruled upon. Furthermore, 233 case dismissals without prejudice have been converted to dismissals with prejudice pursuant to CMO No. 8.

There are 775 complaints pending in JCCP 5052, which is assigned to Judge David S. Cunningham of the Los Angeles Superior Court as the Coordination Trial Judge. There are 84 government entity cases, including 79 school districts, and 691 personal injury cases brought on behalf of over 5,072 individual personal injury plaintiffs. There are 26 defendants named in those JCCP cases.

The Parties are also aware of 11 pending cases filed by State Attorneys General specifically: California, Illinois, Hawai'i, New York, Pennsylvania, Minnesota, Washington D.C.,

⁶ The numbers in this Statement reflect the Parties' good faith estimates based on reasonably available information. The Parties will continue to work together to align their data and resolve any inconsistencies.

1 New Mexico, Massachusetts, Colorado, and Alaska.⁷ In addition, the State Attorney General of
 2 North Carolina filed a case against Director Defendants, which was dismissed with prejudice for
 3 lack of personal jurisdiction. Plaintiffs' Liaison Counsel continue their outreach to various State
 4 Attorneys General to discuss cooperation with this MDL.

5 An update on matters of significance (including hearings, schedules, deadlines,
 6 depositions, substantive orders, and trial dates) in Related Actions as defined by the Joint
 7 Coordination Order (CMO 9, ECF No. 572 at 1, 3), is attached as **Exhibit B**.

8 **IV. CASE MANAGEMENT MATTERS**

9 **1. June Trial Setting.**

10 Plaintiffs and Altria have met and conferred about the June trial setting and will present
 11 letter briefs to the court next week concerning their differing positions. Plaintiffs would also like
 12 to discuss trial length issues.

13 **2. Status of Altria's Motion for Stay Pending Altria's Appeal from the** 14 **Court's June 28, 2022 Class Certification Decision, ECF No. 3734.**

15 Altria has withdrawn its motion for stay pending appeal from the class certification
 16 decision. *See* Stipulation and [Proposed] Order Regarding Altria's Motion to Stay Pending
 17 Appeal, ECF No. 3755.

18 **3. Status of Altria's Motion to Compel Production of Settlement** 19 **Agreements and Related Materials, ECF No. 3733.**

20 Altria has withdrawn its motion to compel production of settlement agreements and
 21 related materials. *See* Altria Defendants' Notice of Withdrawal of Motion to Compel Production
 22 of Settlement Agreements and Related Materials, ECF No. 3751.

23 **4. SFUSD Trial.**

24 Hearing on Trial Length.⁸ SFUSD and Altria have filed short briefs setting forth both
 25 sides' positions about the length and scope of the trial in April. *See* ECF Nos. 3758, 3759.
 26
 27

28 ⁷ Hawai'i and Pennsylvania are parties to a multistate settlement agreement with JLI.

⁸ *See* ECF 3754 at 10, scheduling hearing for January 20, 2023.

V. **Hearing on Round 1 Priority Briefing Regarding the Special Master's Deposition Designation Rulings.**⁹

The parties will be prepared to argue the Round 1 Priority Briefing currently on file.¹⁰

VI. **ADR STATUS**

1. **Settlement Progress**

As announced at the December 6, 2022 Case Management Conference, Plaintiffs, JLI, the Director Defendants, the E-Liquid Defendants, the Retailer Defendants, and the Distributor Defendants have reached an agreement that will create settlement programs to resolve the personal injury, class, tribal, and government entity cases as to those entities and individuals. *See* ECF No. 3690. On December 14, 2022, JLI filed Notice Regarding Proposed Order Re Implementing Settlement, attaching proposed Case Management Order No. 16. ECF No. 3706. Case Management Order No. 16 was entered by the Court on December 16, 2022. ECF No. 3714. On December 19, 2022, Plaintiffs moved for preliminary approval of the class action settlement. ECF No. 3724.

The above-referenced settlement does not include Altria. Plaintiffs and the Altria Defendants will continue to confer with Settlement Master Thomas J. Perrelli and cooperate with his recommendations.

2. **Status of Altria's Response and Objections to Plaintiffs' Motion for Preliminary Approval and Proposed Class Notice Plan**

Since Altria filed its Response and Objections to Plaintiffs' Motion for Preliminary Approval (ECF No. 3741 ("Altria's Prelim. Approval Resp.")), Altria has continued to meet and confer with Plaintiffs regarding class notice and review additional short-form notice and Plaintiffs' amended long-form notice. Altria and Plaintiffs also have met and conferred on whether class proceedings in general should be stayed pending Altria's appeal. Based on these continued discussions and additional materials, Altria is respectfully withdrawing certain

⁹ *Id.* at 12.

¹⁰ Plaintiff's brief (ECF No. 3594) and Defendants' response (ECF No. 3618); Defendants' brief (ECF No. 3595) and Plaintiff's response (ECF No. 3617). Plaintiff no longer seeks a ruling on Section II(A) of Plaintiff's brief. Altria does not seek rulings on testimony by Mr. Goldman or Mr. Asseily (rulings 4 and 5 raised in Defendants' brief), as these witnesses are no longer on any party's witness list.

1 objections that it previously raised with respect to Plaintiffs' proposed class notice and notice
2 plan.

3 In particular, and as reflected in the Stipulation and [Proposed] Order Regarding Altria's
4 Motion to Stay Pending Appeal, ECF No. 3755, Altria is withdrawing its objections to Plaintiffs'
5 proposal to give class notice to the litigation class before the Ninth Circuit rules on Altria's
6 appeal and their related proposal to give notice of both the settlement and the litigation classes in
7 a single notice and notice plan. These objections appear in Sections I and II of Altria's
8 Preliminary Approval Response.

9 In addition, based on revisions that Plaintiffs made to their proposed long-form notice,
10 reflected in Ex. 12 to Plaintiffs' Response to Altria's Preliminary Approval Response, ECF No.
11 3745-2, Altria is withdrawing its objections to the description of the litigation class, the
12 description of allegations concerning Altria included in the long-form notice, the impact of
13 Altria's appeal on the case, the notice's description of the potential impact of remaining in the
14 class on other claims for economic loss for the same purchases of JUUL, the notice's use of red
15 font to describe the class claims against Altria. These objections were raised in Section III of the
16 Altria's Preliminary Approval Response in the paragraphs that raised the "*First*", "*Fourth*," and
17 "*Fifth*" arguments in those sections. Altria Resp. Preliminary Approval at 5, 7.

18 Altria also withdraws its objection raised in Section IV that Plaintiffs had not provided
19 certain components of the notice plan, because Plaintiffs have since provided the short-form
20 notices that were not initially included. Altria, however, respectfully objects that the substance of
21 those documents is similar to the other short-form notices and, like those short-form documents,
22 does not provide sufficient information about the litigation class for the reasons described in
23 Altria's Response to Preliminary Approval when addressing the short-form notices. *See id.* at 7-
24 8.

25 Altria maintains and preserves the remaining objections raised in its Response to
26 Preliminary Approval, including its objections that the long-form and short-form notice fail to
27 adequately advise class members concerning the res judicata impact of remaining in the class, the
28 impact on personal injury claims, and its objections that the notice plan does not establish that it

1 sufficiently reaches litigation class members. Altria also objects that the language added to page
 2 11 should clarify that individuals remaining in the class may be unable to recover for economic
 3 harm based on the same JUUL purchases even when based on anticompetitive conduct. Altria
 4 acknowledges that the Court previously overruled objections similar to several of these remaining
 5 objections when approving Plaintiffs' prior notice plan, *see* ECF No. 3413, but will be prepared
 6 to address those objections should the Court have questions. In addition, Altria respectfully
 7 preserves its objections to class certification and its right to seek certain settlement-related
 8 materials in the future.

9 **3. Proposed Case Management Order No. 17**

10 On January 5, 2023, JLI submitted Proposed Case Management Order No. 17. ECF No.
 11 3737. Pursuant to the Court's Order of January 12, 2023, ECF No. 3750, two entities have filed
 12 objections and responses, ECF Nos. 3747, 3748, to certain aspects of the proposed order. On
 13 January 18, 2023, JLI filed a response to those objections, ECF No. 3760. The parties will be
 14 prepared to address the issues raised in the responses and objections to Proposed Case
 15 Management Order No. 17 at the Case Management Conference.

16 With regard to Altria's objection to CMO 17, without addressing all issues of contention
 17 between JLI and Altria, and without taking a position generally, to clarify issues and minimize
 18 areas of disagreement before the court, Plaintiffs state:

19 1) They agree with JLI that under no circumstance should the terms of the proposed
 20 order apply to the settling plaintiffs. It would be counterproductive and a colossal waste of time
 21 and cost for the thousands of settling personal injury plaintiffs, government entities and tribes to
 22 be required to embark on the discovery proposed in CMO 17 that was specifically directed to
 23 cases that opt out of the settlement, or are filed subsequently. Moreover, as a condition of the
 24 settlement, plaintiffs were required to complete fact sheets so discovery exists as to all of them
 25 already.

26 2) Plaintiffs are in accord with and do not oppose Altria's suggestion that "any
 27 additional disclosures or productions shall be served on Altria in addition to JLI." In other words,
 28 if the Court is granting CMO 17, in sum or substance, the imposed discovery obligations for non-

1 settling plaintiffs that must be served on JLI, can also be served on Altria.

2 3) With regard to Altria's fourth point seeking additional discovery, Plaintiffs would
3 not object to require any newly filed Plaintiffs to disclose where they purchased JUUL products at
4 retail locations. This information was addressed in substance in the completed PFS, so there is no
5 need for non-settling Plaintiffs to provide that to Altria, as they would have completed the PFS,
6 but it is not unreasonable for the newly filed Plaintiffs to provide that information.

1 Dated: January 18, 2022

Respectfully submitted,

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